

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:21-cv-00415-RJC-DCK

JAMES EDWARD DUNCAN III,)
)
Plaintiff,)
)
)
)
)
ERICK KELLY, ANDREW ISAACS,)
CHARLOTTE MECKLENBURG POLICE)
DEPARTMENT, and CITY OF CHARLOTTE,)
)
)
Defendants.)

Order

THIS MATTER comes before the Court on Plaintiff's motion for entry of default. (Doc. No. 24).

Plaintiff filed his pro se Complaint on August 12, 2021. (Doc. No. 1). Defendants responded with motions to dismiss. (Doc. Nos. 5, 8). On November 12, 2021, Plaintiff filed an Amended Complaint. (Doc. No. 14). Defendants responded on November 26, 2021, again with a motion to dismiss. (Doc. No. 17). Thereafter, on January 4, 2022, Plaintiff filed a motion for entry of default. (Doc. No. 24).

Pursuant to Federal Rule of Civil Procedure 15, a defendant may respond to an amended complaint "within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later." Fed. R. Civ. P. 15(a)(3). A defendant may properly respond to an amended complaint by filing a motion under Rule 12(b), including for failure to state a claim. Fed. R. Civ. P. 12(b). "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a).

Here, Plaintiff's motion for entry of default requests entry of default against all Defendants, but provides no grounds by which this Court may enter default. Defendants timely responded to the Amended Complaint, within 14 days, by filing a joint motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6). Plaintiff responded to the motion to dismiss. (Doc. No. 23). Accordingly, Defendants timely defended against Plaintiff's Amended Complaint and default may not be entered.

IT IS, THEREFORE, ORDERED that Plaintiff's motion for entry of default (Doc. No. 24) is **DENIED**.

Signed: March 22, 2022



Robert J. Conrad, Jr.
United States District Judge

